



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MAC - 202890

PRELIMINARY RECITALS

Pursuant to a petition filed on August 18, 2021, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Dane County Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on February 2, 2022, by telephone.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency correctly seeks to compel payment of an overissuance of MA benefits in the total amount of \$2,795.00 from the Petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Dane County Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of the State of Illinois. Petitioner had moved to Illinois from her previous residence located [REDACTED] in [REDACTED] Wisconsin.
2. Petitioner reported her Illinois address to the respondent on March 2, 2020.
3. Petitioner received MA benefits as a Wisconsin resident between August 1, 2019 and March 31, 2020.
4. On December 21, 2020, the agency sent the Petitioner a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notices indicating that she was overissued MA benefits for the period of August 1, 2019 through March 31, 2020, identified as claim nos. [REDACTED] (1,9263.00) and [REDACTED] (\$869.00).
5. The agency sent the Petitioner dunning notices (reminders about the debt) on February 2, 2021, March 2, 2021, and April 2, 2021.
6. On August 18, 2021, the agency issued a Notice of Administrative Action and Order to Compel Payment to the Petitioner informing her of the requirement to immediately repay the MA overpayment within 30 days. The notice also informed her of the right to appeal the agency's collection action by filing a request for a hearing with the Division of Hearings and Appeals within 30 days of the date of the notice.
7. All notices identified in Findings of Fact 4-6 were mailed to petitioner at [REDACTED] in [REDACTED].
8. The Petitioner filed a request for fair hearing with the Division of Hearings and Appeals on August 18, 2021.

DISCUSSION

An administrative law judge has the authority to review and rule on a matter only if there is jurisdiction to do so. There is no jurisdiction if an appeal is not timely filed. For MA overpayments, an appeal must be filed within 90 days of the agency action. Wis. Stats. § 49.45. For orders to compel payment, an appeal must be filed within 30 days. Wis. Stat., § 49.497(1m)(a).

Following an investigation into petitioner's Wisconsin residency, the agency concluded that petitioner incorrectly received Wisconsin MA benefits after moving to Illinois. The Petitioner filed an appeal because she does not think she should be held liable for the overpayment underlying the tax intercept, as she claims that she remained a Wisconsin resident during the overpayment. With regard to the underlying overpayment, the Petitioner's appeal is untimely, which deprives the Division of Hearings and Appeals with jurisdiction to review the merits of petitioner's claim.

At the hearing, the agency produced evidence that it issued notices to the Petitioner at an Illinois forwarding address provided by USPS. The overpayment notice informed her of her right to appeal the action to the Division of Hearings and Appeals. The agency subsequently issued dunning notices to the Petitioner; after issuing the required dunning notices and receiving no payments, the agency took action to order payment.

Petitioner's August 18, 2021, appeal was filed well beyond 90-days from the date of the December 21, 2020 overpayment notice. Petitioner claims that she did not reside at the address to which the notices were mailed. The agency argued that the overpayment was mailed to the forwarding address provided by USPS, and the record does not reflect that any of the notices were subsequently returned as undelivered. Where the evidence presented demonstrates that a notice was correctly mailed, this fact creates a

rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by Wisconsin case law:

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. *See, Nack v. State*, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence* 2d. ed.) § 2153; 1 Wigmore, *Evidence* (2nd ed.) § 95) *Mullen v. Braatz*, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); *Solberg v. Sec. Of Dept of Health & Human Services*, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); *Hagner v. United States*, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

*** (Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. *United States v. Freeman*, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. *United States v. Bowen*, 414 F.2nd 1268, 1273(3d.Cir.1969); *Mullen v. Braatz*, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

See *State ex. Rel. Flores v. State*, 183 Wis.2d 587, at 612-3 ((1994).

Petitioner offered nothing to rebut this presumption other than to state that she did not reside at the mailing address. That is insufficient. The agency sent the notice to the address that the USPS was directed to forward the mail. The notice was not returned to the agency as undelivered or undeliverable which leads to my presumption that it was properly delivered to the address petitioner wanted her mail sent to. The agency did all it was required to do. The appeal was not filed timely and, as such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

It is undisputed that the Petitioner has not made any payments on the overpayment. The agency may obtain an order to compel payments from those who have not taken steps to repay a medical assistance overpayment. The process for doing so is found in Wis. Stat. § 49.497(1m)(a):

If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.

The Petitioner's appeal was timely for the Order to Compel action. However, the only issue for a hearing on the matter is whether the Petitioner has made payments or complied with a repayment agreement. In this case, it is undisputed that the Petitioner did not enter into a repayment agreement or make any payments on the overpayment. Therefore, I conclude the agency correctly issued an Order to Compel payment of the outstanding MA overpayment in the total amount of \$2,795.00.

CONCLUSIONS OF LAW

1. The Petitioner's appeal is not timely as to the overpayment action.
2. The Petitioner's appeal is timely as to the collection action.
3. The agency correctly issued an Order to Compel Payment to the Petitioner for an unpaid public assistance debt in the amount of \$2,795.00.

THEREFORE, it is

ORDERED

That the petition appeal is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

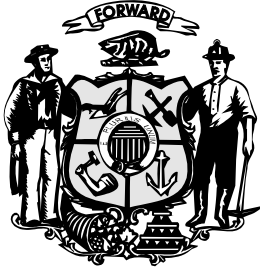
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of March, 2022



Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 2, 2022.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability